

Ralph, Earl of Mountague,
Elizabeth, Dutcheſs of Albemarle, his Wife,
And Mr. Monk, } Appel.

John Earl of Bathe,
and others. } Reſp.

T H E
R E S P O N D E N T S
A N S W E R

T O A

Printed P A P E R,

Called,

K. Montagu (Elizabeth) Dutcheſs of Albemarle
The Dutcheſs of ALBEMARLE, and Mr. MONK'S

C A S E

Against the Said RESPONDENTS.

SINCE the Respondents printed their Case, there is a Paper come abroad, Entitled, *The Case of the Dutcheſs of Albemarle and Mr. Monk, against the Earl of Bathe, and others Respondents*, wherein the Author declares, the general Question to be, Whether the Deed of 1681, or the Will of July 87, in Equity ought to be construed to be the true Settlement of the Duke's Estate.

And then complains, the Decretal Order only declares, That the Court saw no Cause in Equity, to relieve the Appellants, at which the Author is greatly offended; and saith, *The Court ought to have given a Reason why they saw no cause to relieve*. This is certainly an Original; for no one before did ever expect a Reason why another could not see a thing that did not appear.

But in the next place he arraigns the Lord Keeper and Judges for taking it to be a Good Deed; Whereas, saith he, *only the Fact was tried, and the Verdict ought to be no farther Evidence, than that the Duke executed the Deed*. If the Deed was found by Verdict, to be well executed, as the Au-

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Author admits, wherein was the Iniquity of the Court to take it to be a good Deed. But rather why doth the Author, after he admits it to be the *Dukes Deed*, stuff the rest of the *Paper* with so many Libellous Matters; as tho the *Deed* had never been Executed. The Plain Reason of it is; Because the Author hopes to amuse some by bold Reflections, altho nothing to the Point, which he himself makes to be a Question in Equity the Law being agreed by himself, to be against the Appellants, his Points, of Surprize, Concealment, and Resulting Trust, remain only Points in Equity; so that the Libellous part being determin'd at Law, where the Respondents had many other Witnesses than these in *Chancery*, they need not here Answer what they there confuted out of any respect to their Cause. Nevertheless, not to suffer such scurrilous Reflections to remain unanswer'd: They say, that they cannot but wonder to see the Author again to mention the Rasure in the Date of the *Deed*, as though there was some very ill Practice therein, whereas the Date is not Material, so as it was Sealed at any time, either before, or after, and it is not to be supposed that any one should do an ill thing for no End, but the Rasure is plain and visible, and not done with Art, to deceive, but always own'd, and fully prov'd to be before the Sealing.

I. *The Writer swears it done by him ten years before, and that he never saw it under Seal, untill he saw it at the Examiners Office, at his Examination in this Cause.*

II. *Mr. Croft's, who read the same at the first opening, doth swear, The Room being dark, he by mistake read it 82; but at the same time corrected himself: And it was then handed about, and agreed to be 81. And it stands now as it was then.*

*Answers to the
Rasure in the
Date of the
Deed of 81.*

III. *Mr. Aleman, one of the Witnesses, went beyond Sea in September 81, and had a Pass from the Secretary of State, which he produced of that Date, and positively swears it was before he went.*

IV. *All the Witnesses swear it was in Albemarle's House, which was sold before 82.*

V. *Sir Thomas Stringer took an Abstract thereof before the Duke went to Jamaica, where it is plainly mentioned to bear Date, as now it appears in July, 1681.*

The next thing quarrell'd at is, that the Earl by his Answer saith, he knew not who writ the Deed, and what wonder is it, if a Person that had been concern'd in such variety, and multiplicity of Business, as the Earl was, should not after so great a length of time as ten years, call to mind who it was that did a particular thing.

The next Reproach that is therein repeated, doth rather shew the Malice than Discretion of the Author, for he cannot but remember that the Seal-Cutter swears that Mr. Bull the Earl of Bathe's Secretary helped him him to many Customers, and that it is about 28 years since he cut two Seals, one for the Earl of Bathe, and this of the Duke of Albemarle's, for which the Earl of Bathe paid him; and this they would have to be a Seal prepared only for the Sealing of this Deed, and kept by the Earl for such purpose; but it was proved.

I. *That*



- I. *That Duke George used this as his Seal, by many Instruments produced at the Tryal, that had been kept by the Parties from the time they received them from his Hand.*
- II. *Marthew Lock Esq; the old Duke's Secretaty swore, That he kept the same Seal many Years in the Old Duke's Time, and deliver'd it to his Son, the last Duke. after his death.*
- III. *That there were many Instruments also produced at the Tryal made by Duke Christopher under the same Seal.*

And surely after such Proof to renew this Reflection, is very malicious.

The *Author* quarrels with the Unlawyer-like Pening of the *Deed* of 81. But by whom was it done? was it not by *Sr. Thomas Stringer*, the *Dukes Council*? And if good in Law, shall his Informalities make it void in Equity? That surely they will not agree; for then what would become of their *Will* of 87. Their own great Oracle had his *Blunders*.

How comes it to pass (unless to shew the Duke was not in earnest) That by that *Will*,

- I. *The Remainder of all the Estate is limited to the Regicide Issue, whom the Duke made it his great Concern to exclude from Inheriting what came from the Crown.*
- II. *How comes it that the Duke, after he had given his Heir at Law 5000 l. absolutely by the Will of 75, gives it by this only upon Condition, That she Release her Right to 500 l. per Ann. her paternal Estate, and to Pudridg the Capital Seat, where the Duke had laid out 16000 l. in Building. This could not be in Earnest.*
- III. *How comes he to enjoyne Mr. Monke to make that his Habitation, could he think his Uncles Daughter would so easily give up what she had by Settlement from her Father, Duke George's elder Brother? That is no more to be imagined than that the Duke really intended it.*

In Answer to this the *Appellants* will say, Altho *Mrs. Pride's* Father to keep the Estate in his Name, settled those Lands, from his own Daughter, on his Brother Duke George in tail Male, with the remainder to his Daughter; yet the Dukes might have suffered a Recovery, and then the Devise to Mr. *Monke* would have been good: And however they out of Honour would not do so ungrateful a thing. Yet in regard they could have done it if they pleased, that now in favor of the Devise his Intent appearing thereby, Equity shall supply both the Recovery in this Case, and the Revocation in the other. But God forbid such dangerous *Doctrine* should take place.

The rest of the Paper declining to contend the Reality of the *Deed*, and labouring only to perswade, that in Equity Mr. *Monk* without Kindred or Merit, ought to have Preference to the Duke of *Albemarle's* Estate, and not the Respondents: The Respondents forbear to answer the same, but refer to their Printed Case, and doubt not but every impartial Reader will agree, that if they have the best Title at Law, they ought not in Justice or Equity to be further disquieted.

But

But the Author having in the beginning of these Sutes, rais'd and spread these scandalous Reports, doth now even against his own Conviction (the Appellants acquiescing in the Verdict, and not denying the Deed, but only insisting on Equity) maliciously revive the same.

And the Respondents hope, That as they have been vindicated against that foul Imputation of Forgery, by a Verdict at Law; and of that of Surprise, and Concealment, by a Decree in Chancery; after full deliberation, they shall now be dismissed by this Noble House, and repared against the Author of that Paper, for his Confessed, Willful and Malicious Scandals.

THE Respondents at the Trial Examined the several Witnesses following, which are not Examined in Chancery, viz.

The Eagle of *Macclesfield*.

The Lord Carteret.

Sr. Casar Ranmer.
Sr. Peter Prideaux.

Sr John Maylesworth.

Sr. John Maylesworth.
 Sr. Thomas Higgins.

Pullein, Esq;

Doctor Nixon, a Prebend of
Canterbury.

Mr. Serjeant Bonithon.

THE following *Witnesses* were Examined at the *Trial*, to several *Points*, whereunto they had not been Examined in *Chancery*, viz.

Matth: & Lock, Esq;

William Shaw, Esq;

Mr. Heber Mayte, Sr. William
Jones's Chief Clerk.

Mr. Chapman, Sr. Tho. Stringer's
Clerk.

Andrew Barry, Esq;

Mr. Thompson, the Scrivener.

Mr. East, the Scale-Cutter.

Mr. Errington.

Several other material *Witnesses* which were in Court to have been Examined, but were not, by reason the Court were satisfied without them, viz.

The Honourable *Francis Roberts*, Esq;

Sr. Thomas Ogle.

Major *Francis Kelly*.

And many others.

